

**Notice of Allowability**

Application No.

09/762,491

Examiner

MISOOK YU, Ph.D.

Applicant(s)

LUO ET AL.

Art Unit

1642

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 4/4/2006.
2. ☒ The allowed claim(s) is/are 1-20 and 25-30.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

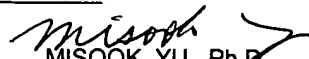
Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☒ Other Interference Decision.

  
MISOOK YU, Ph.D.  
Primary Examiner  
Art Unit: 1642

### **EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

The application has been amended as follows:

After the title of the invention at page 1,

"This is a 371 of PCT/US99/17776 filed 08/06/1999, which claims benefit of 60/099,486 filed 09/08/1998, 60/095,590 filed 08/06/1998, and 60/095,587 filed 08/06/1998."

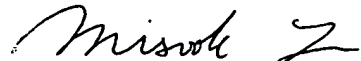
Any inquiry concerning this communication or earlier communications from the examiner should be directed to MISOOK YU, Ph.D. whose telephone number is 571-272-0839. The examiner can normally be reached on 8 A.M. to 5:30 P.M., every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shanon Foley can be reached on 571-272-0898. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
MISOOK YU, Ph.D.  
Primary Examiner  
Art Unit 1642

Filed by

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Filed: April 4, 2006

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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BRUCE C. GOMES, GARRETT M. KASOF  
and JUDITH C. PROSSER,  
Junior Party  
(U.S. Patent No. 6,096,539),

v.

YING LUO, BETTY HUANG,  
MARY SHEN and PEIWEN YU,  
Senior Party  
(U.S. Patent Application No. 09/762,491).

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Patent Interference No. 105,382 (MPT)  
(Technology Center 1600)

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**JUDGMENT - Bd. R. 127**

Before: SCHAFFER, TIERNEY, and MOORE, Administrative Patent Judges.

TIERNEY, Administrative Patent Judge.

Judgment is entered against Junior Party Gomes. Junior Party Gomes failed to timely file a priority statement as required by the rules. An Order to Show Cause was sent on March 23, 2006 requesting that Gomes show cause why judgment on priority of invention should not be

entered against it. (Paper No. 42). Gomes has filed a paper stating that it will not show cause.  
(Paper No. 43).

It is:

**ORDERED** that Junior Party Gomes has failed to provide a showing that it is entitled to priority of invention as against Senior Party Luo for the subject matter of Count 1, the sole count in interference.

**FURTHER ORDERED** that judgment on priority is entered against Junior Party Gomes on Count 1.

**FURTHER ORDERED** that Junior Party Gomes is not entitled to a patent containing claims 1-2 and 5-11, all of which correspond to Count 1, of its involved U.S. Patent No. 6,096,539.

**FURTHER ORDERED** that a copy of this paper shall be made of record in the files of U.S. Application No. 09/762,491 and U.S. Patent No. 6,096,539.

**FURTHER ORDERED** that the parties attention is directed to the settlement agreement provisions in 35 U.S.C. §135(c) and 37 C.F.R. §41.205.

\_\_\_\_\_/ss/ Michael P. Tierney )  
MICHAEL P. TIERNEY )  
Administrative Patent Judge )

BOARD OF PATENT  
APPEALS AND  
INTERFERENCES

cc (via Facsimile):

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